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## **OLR Bill Analysis**

### **sHB 5485**

#### ***AN ACT CONCERNING VOYEURISM.***

##### **SUMMARY:**

This bill makes a number of changes regarding voyeurism crimes and their victims. It:

1. expands the conduct punishable as voyeurism and expands the sex offender registry requirements to cover this new conduct;
2. increases the penalty for voyeurism when the victim is under age 16 or the offender has a prior conviction of voyeurism or certain other crimes;
3. extends the statute of limitations for voyeurism under certain circumstances;
4. increases the possible probation term for certain types of voyeurism; and
5. extends to voyeurism victims three protections existing law gives to certain sexual assault victims regarding their names, addresses, and other identifying information.

EFFECTIVE DATE: October 1, 2014

#### **§§ 1-2 — VOYEURISM CRIME AND PENALTIES**

##### ***Criminal Conduct***

The bill expands the crime of voyeurism in two ways. First, it punishes someone who:

1. intends to arouse or satisfy his or her sexual desire,
2. commits simple trespass (entering premises knowing he or she is not entitled to do so without intent to harm any property, which

is punishable as an infraction),

3. observes another person who is inside a dwelling and not in plain view under circumstances where there is a reasonable expectation of privacy, and
4. does not have the other person's knowledge or consent and the observation is not casual or cursory.

Second, it punishes someone who:

1. intends to arouse or satisfy his or her or someone else's sexual desire;
2. knowingly photographs, films, videotapes, or records the victim's genitals, pubic area, buttocks, or undergarments or stockings used to clothe them, when they are not in plain view; and
3. records such an image without the victim's knowledge and consent.

Under existing law, a person commits voyeurism when (1) he or she knowingly photographs, films, videotapes, or records the victim's image; (2) he or she acts maliciously or intends to satisfy his or her or another's sexual desire; and (3) the victim is not in plain view, has a reasonable expectation of privacy under the circumstances, and does not know of, or consent to, the conduct.

### ***Penalty***

Under current law, voyeurism is a class D felony punishable by up to five years in prison, a fine of up to \$5,000, or both. Under the bill, it is a class C felony when (1) the victim is under age 16 or (2) it is a subsequent voyeurism conviction or the offender has a prior conviction of:

1. risk of injury to a minor involving sale of a child under age 16;
2. 1<sup>st</sup> degree sexual assault, 1<sup>st</sup> degree aggravated sexual assault,

sexual assault in a spousal or cohabiting relationship, 2<sup>nd</sup> degree sexual assault, 3<sup>rd</sup> degree sexual assault, or 3<sup>rd</sup> degree sexual assault with a firearm;

3. enticing a minor, promoting a minor in an obscene performance, or importing child pornography; or
4. 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> degree possessing child pornography.

By law, a class C felony is punishable by one to 10 years in prison, a fine of up to \$10,000, or both.

### ***Statute of Limitation***

Currently, any voyeurism prosecution must begin within five years after the date of the offense. The bill extends the time period for prosecuting the types of voyeurism crimes involving recording the victim's image and allows these prosecutions to begin within five years from the date the victim discovers the recording's existence.

### ***Probation Term***

Currently, a court can impose a three-year probation term after a voyeurism conviction, but the court has discretion to increase this term to five years. The bill increases the possible probation term to 10 to 35 years when the voyeurism conviction involves (1) the types of voyeurism added by the bill or (2) recording the victim's image when the victim is not in plain view with intent to satisfy the actor's or another's sexual desire.

## **§§ 3-4 — SEX OFFENDER REGISTRATION**

The bill designates committing the types of voyeurism added by the bill as a "nonviolent sexual offense" subject to 10-years sex offender registration. The bill allows the court to exempt a person from registration if it is not required for public safety. Existing law subjects to this same requirement and possible exemption, voyeurism committed by recording the victim's image when the victim is not in plain view with intent to satisfy the actor's or another's sexual desire.

As under current law, someone who commits a subsequent

nonviolent sexual offense must register for life.

### **§§ 5-7 — PROTECTIONS FOR VOYEURISM VICTIMS' NAMES AND ADDRESSES**

The bill extends to voyeurism victims three protections existing law gives to certain sexual assault victims regarding their names and addresses.

First, the bill allows agencies to exempt from disclosure to the public under the Freedom of Information Act (FOIA) law enforcement records that disclose the name and address of a voyeurism victim if the:

1. record was created in connection with detecting or investigating a crime and is not otherwise available to the public and
2. agency determines that disclosure would not be in the public interest because it discloses a victim's name and address.

Second, the bill prohibits requiring a voyeurism victim to divulge his or her address or phone number during a trial or pretrial evidentiary hearing arising from the voyeurism incident if the judge finds the (1) information is not material, (2) victim's identity is satisfactorily established, and (2) victim's current address will be given to the defense in the same way as with other offenses.

Third, the bill makes confidential a voyeurism victim's name, address, and other information the court determines is identifying but allows:

1. a court to order disclosure;
2. the accused to have access to the information in the same way as for other offenses; and
3. for a protective order issued in the prosecution, the victim's name and address and information contained in and concerning the order's issuance to be entered in the protective order registry (this information is generally available to certain court and

criminal justice officials and others but is not otherwise disclosed except under court order and a victim can place certain limitations on its use).

By law, these three protections already apply to the names, addresses, and information of victims of:

1. 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, or 4<sup>th</sup> degree sexual assault;
2. 1<sup>st</sup> degree aggravated sexual assault;
3. 3<sup>rd</sup> degree sexual assault with a firearm;
4. risk of injury to a minor; or
5. an attempt to commit one of these crimes.

## **BACKGROUND**

### ***Related Bills***

sSB 381 (File 425), favorably reported by the Government Administration and Elections Committee, and sSB 388, favorably reported by the Judiciary Committee, both change exemptions under FOIA for certain law enforcement records.

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 40 Nay 0 (04/02/2014)